

ESTTA Tracking number: **ESTTA774671**

Filing date: **10/05/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Zapf Creation AG
Granted to Date of previous extension	10/05/2016
Address	Monchrodener Strasse 13 Rodental, D96472 GERMANY
Attorney information	Jeffrey H. Handelsman Greenblum & Bernstein, P.L.C. 1950 Roland Clarke Place Reston, VA 20191-1411 UNITED STATES eteas@gbpatent.com,jhandelsman@gbpatent.com Phone:703-716-1191

Applicant Information

Application No	86877268	Publication date	06/07/2016
Opposition Filing Date	10/05/2016	Opposition Period Ends	10/05/2016
Applicant	Maison J. Battat, Ltee. 8440 Darnley Road Montreal, H4T1M4 CANADA		

Goods/Services Affected by Opposition

Class 028. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Baby multiple activity toys; Infant development toys; Infant toys

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2578492	Application Date	08/17/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	BABY BORN		

Design Mark	BABY BORN
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1991/01/07 First Use In Commerce: 1994/01/10 dolls, doll clothing, doll accessories and doll furniture sold as a unit

U.S. Registration No.	3261217	Application Date	01/13/2004
Registration Date	07/10/2007	Foreign Priority Date	07/23/2003

Word Mark	BABY BORN
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 025. First use: First Use: 0 First Use In Commerce: 0 [Clothing, namely, t-shirts, sweatshirts, pullovers, shirts, blouses, trousers, pajamas, articles of underclothing, hats, caps, shoes, socks, boots, jackets, coats, slippers, jogging sweats, shorts,headwear]</p> <p>Class 028. First use: First Use: 0 First Use In Commerce: 0 Dolls and accessories for dolls, namely, doll dresses, rompers, [jackets, pants, skirts, shirts, bath robes, pullovers, headbands, blouses, socks, pantyhose, rain coats, scarves, head coverings, in particular caps and hats, underwear, shoes, changing pads, diaper bags; toy diapering tables for dolls;] doll accessories, namely, bibs, potties, diapers, blankets, play blankets; [toy music boxes; toy bath tubs and bath utensils; doll accessories, namely, doll cosmetic preparations for baths, shower baths, shampoo; toy photographic apparatus, namely, toy cameras; miniature toy helmets; snow sleds for recreational use;] doll accessories, namely, [snow goggles, umbrellas and parasols; toy kitchen utensils, cooking plates, stoves, china cutlery, sinks,pots, pans, cups, irons, ironing boards,] baby bottles, [bottle warmers, bottle warmer stations, doll food,] pacifiers [, carrying beds, car seats, scooters, buggies, high chairs, foot muffs, carrying seats and belts, backpacks, beds, travel beds, cradles, sleeping bags, cushions, wardrobes, boxes, deck chairs, dressers and cosmetic boxes; board games; playing cards; fitness and sports article, namely, exercise benches and bars; and Christmas tree decorations]</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jeffrey H. Handelsman/
Name	Jeffrey H. Handelsman
Date	10/05/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
Zapf Creation AG)	
)	Opposition No. _____
Opposer,)	
)	Application Serial
v.)	No. 86877268
)	
)	Published in the Trademark
Maison J. Battat, Ltee.)	Official Gazette on
)	June 7, 2016
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Zapf Creation AG (“Zapf Creation” or “Opposer”), a corporation organized under the laws of Germany, having an address at Mönchrödener Strasse 13, Rödental, GERMANY 96472, believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 86877268 (the “Opposed Application”), and hereby opposes the same, pursuant to 15 U.S.C. § 1063 and 37 CFR § 2.104.

As grounds for the Opposition, it is alleged, upon information and belief that:

1. Zapf Creation sells various products, including but not limited to dolls and



doll accessories under the marks “BABY BORN” and (“Opposer’s Marks” or “Zapf Creation’s Marks”), since a time prior to the filing date of the Opposed Application.

2. Zapf Creation is the owner of the valid and subsisting United States Trademark Registration No. 2578492 for the mark “BABY BORN” covering *Dolls, doll clothing, doll accessories and doll furniture sold as a unit*, in International Class 28; and



U.S. Trademark Registration No. 3261217 for the mark covering
Dolls and accessories for dolls, namely, doll dresses, rompers, doll accessories, namely, bibs, potties, diapers, blankets, play blankets; doll accessories, namely, baby bottles, pacifiers, in International Class 28.

3. The U.S. Patent and Trademark Office (USPTO) issued registrations for Opposer's Marks on June 11, 2002 and July 10, 2007.

4. Zapf Creation's Marks are incontestable, with declarations pursuant to 15 U.S.C. § 1065 being filed and accepted by the USPTO.

5. By the application herein opposed, Applicant seeks to register the mark



("Applicant's Mark") for the following goods:

Baby multiple activity toys; Infant development toys; Infant toys, in International Class 28.

6. Applicant's Mark was published in the *Official Gazette* on June 7, 2016.

COUNT ONE

Likelihood of Confusion, 15 U.S.C. § 1052(d)

7. Zapf Creation repeats and realleges each and every allegation set forth in each of the preceding paragraphs.

8. Zapf Creation has priority rights in its "BABY BORN" Marks in the United States.

9. Applicant filed the Opposed Application on January 15, 2016 based on its intent-to-use the mark in U.S. commerce.

10. Zapf Creation's Marks were registered in the United States on June 11,

2002 and July 10, 2007, prior to the Applicant's filing date.

11. Applicant had constructive knowledge of Zapf Creation's Marks before filing the Opposed Application.

12. Zapf Creation's Marks are inherently distinctive and represent the valuable goodwill associated with Zapf Creation's goods.

13. Zapf Creation's Marks have become well-known throughout the respective industries of use.

14. As a result of Zapf Creation's extensive use and consumer recognition, Zapf Creation's Marks are famous.

15. Applicant's Mark is confusingly similar to Zapf Creation's Marks and when applied to the goods of the Applicant, is likely to cause confusion, to cause mistake and/or to deceive under 15 U.S.C. § 1052(d).

16. Consumers encountering Applicant's Mark and associated goods are likely to believe that such goods originate from or are authorized or sponsored by Zapf Creation.

17. The goods offered in connection with Applicant's Mark are highly similar and travel in the same channels of trade as those used in connection with Zapf Creation's Marks.

18. Upon information and belief, if the Opposed Application is registered, it would diminish the value and dilute the distinctiveness of Zapf Creation's Marks.

19. Allowance of Applicant's application and registration of Applicant's Mark would restrict and impair Zapf Creation's right to develop and expand its use of the Zapf Creation Marks, and would otherwise cause injury and damage to Zapf Creation, as well as its goodwill and reputation.

WHEREFORE, Opposer prays that Application Serial No. 86877268 be refused registration and that this Opposition be sustained in favor of Opposer.

Opposer appoints Greenblum & Bernstein, P.L.C., 1950 Roland Clarke Place, Reston, Virginia 20191-1411 to act as attorneys for Opposer herein, with full power to transact all relevant business with the U.S. Patent and Trademark Office and in the

United States Courts and to receive all official communications in connection with this opposition.

Respectfully submitted,

Dated: October 5, 2016

By: /Jeffrey H. Handelsman/
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Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Opposition was served on Applicant's counsel of record, via First Class Mail, postage prepaid, as follows:

Andrew S. Langsam
Pryor Cashman LLP
7 Times Square
38th Floor
New York, New York 10036

Date: October 5, 2016

/Jeffrey H. Handelsman/
Jeffrey H. Handelsman
Attorney for Opposer